

FULL BENCH.

Before Sir W. C. Petheram, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice Prinsep, Mr. Justice Wilson, and Mr. Justice O'Kinealy.

1886
May 5.

BANI MADHUB MITTER (PLAINTIFF) *v.* MATUNGINI DASSI AND
OTHERS (DEFENDANTS.)

KALI SHUNKAR DASS (PLAINTIFF) *v.* GOPAL CHUNDER DUTT
(DEFENDANT.)*

*Limitation Act (XV of 1877), s. 12, Sch. II, Art. 152—Exclusion of time
between delivery of judgment and signing decree—Civil Procedure Code,
(Act XIV of 1882), s. 205.*

Where a suitor is unable to obtain a copy of a decree from which he desires to appeal, by reason of the decree being unsigned, he is entitled under s. 12 of the Limitation Act to deduct the time between the delivery of the judgment and that of the signing of the decree in computing the time taken in presenting his appeal.

THE question raised in these two appeals was, whether or no they were filed within time. The cases came on for hearing before Mitter and Macpherson, JJ., who, considering that the case of *In re Chowdhry Mohendro Narain Roy* (1) conflicted to some extent with the case of *Ramey v. Broughton* (2), referred the question to a Full Bench.

With reference to the points raised the following facts are material:—

In Special Appeal No. 2065 of 1884 the date of the Munsiff's judgment was the 17th July 1883.

The date on which the original decree was signed was the 23rd July 1883.

The date on which the application for copy of the decree was made was the 3rd August 1883.

The date on which the copy of the decree was ready for delivery was the 11th August 1883.

* Full Bench on Special Appeals Nos. 2065 of 1884 and 534 of 1885 from the decisions of the Judge of Zillah 24-Pergunnahs, dated respectively 22nd July 1884 and 26th of February 1885, affirming the decrees respectively of the First-Munsiff of Baraset and the Third-Munsiff of Alipur, dated respectively the 17th July 1883 and 27th February 1884.

(1) 18 W. R., 512.

(2) *Q. L. R.*, 10 Cal., 652.

The date on which the appeal was filed was the 30th August 1883.

In Special Appeal No. 534 of 1885 the date of the Munsiff's judgment was the 27th February 1884.

The date of application for a copy of the decree was made on the 29th February 1884.

The date on which the original decree was signed was the 4th March 1884.

The date on which the copy was ready and delivered was the 7th March 1884.

The date on which the appeal was filed was the 7th April 1884, the 6th April being a Sunday.

Baboo *Bhobani Charan Dutt* for the appellant in Special Appeal No. 2065.—The question is what is the meaning of the words "time requisite for obtaining a copy" in s. 12 of the Limitation Act. As to this see *Chowdhry Mohendro Narain Roy, In re* (1) where the time between the date on which judgment was pronounced and that on which the decree was signed was allowed; that decision was under Act VIII of 1859, s. 333. Subsequent provisions for the limitation of appeals have been re-enacted in the Limitation Acts, which contain words to the same effect as those in s. 333. If the Legislature had not approved of Phear, J.'s decision in *Chowdhry Mohendro Narain Roy's* case some alteration would have been made. Article 152 of the Limitation Act of 1877 declares that limitation shall run "from the date of the decree appealed against," but nowhere in that Act is the date of the decree defined to be the date on which the decree comes into existence. I submit the "date of the decree" in Article 152 means the date on which the decree was actually prepared and signed.

Baboo *Guru Das Banerjee* (with him Baboo *Aubinash Chunder Banerjee*) for the respondent.—Section 205 of Act XIV of 1882 defines "the date of the decree." The language of s. 12 of the Limitation Act of 1877 supports my contention that time runs from the date of the judgment—see *Ramey v. Broughton* (2). Article 152 of the Limitation Act must be read subject to s. 205 of the Code.

(1) 18 W. R., 512. (2) I. L. R., 10 Calc. 652,

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	The opinion of the Full Bench was delivered by

PETHERAM, C.J.—The reference in these two cases involves the question of the construction of s. 12 of the Limitation Act read along with Article 152 of the second schedule of the same Act.

Article 152 limits the time for an appeal under the Code of Civil Procedure to the District Judge to 30 days from the date of the decree or order appealed against; and the question is, from what date is this period to be computed?

The first question is, what is the date of the decree, and for the purpose of ascertaining that, it is necessary to look at s. 205 of the Code of Civil Procedure. By that section it is provided that a "decree shall bear date the day on which the judgment was pronounced, and when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree," so that whatever may be the day on which the actual signature is made, the date of the decree, for all purposes, is to be the date on which the judgment was pronounced.

Bearing that in mind, and also bearing in mind that under s. 541 of the Code of Civil Procedure, it is necessary that the Memorandum of Appeal shall be accompanied with a copy of the decree, it would be unfair to compute the period of limitation, in all cases, from the date on which the judgment was delivered, because it is obvious that things may intervene so as to prevent the decree being signed until after the expiration of the whole period of 30 days allowed for preferring the appeal, and so the appeal may be rendered impossible without any fault of the parties; and therefore s. 12 of the Act provides that in computing this period of 30 days, the time requisite for obtaining a copy of the decree appealed against shall be excluded; and the question really in this case is, what is the meaning of these words.

The facts are (taking Special Appeal No. 2065 first) that the judgment was pronounced on the 17th July 1883, and

consequently that is to be taken as the date of the decree. The decree was not in fact signed until the 23rd July, so that until that day the appellant could not have obtained the necessary materials, the copy of the decree, to enable him to appeal. He applied for a copy on the 3rd August and obtained it on the 11th idem, so that he is under s. 12 of the Limitation Act entitled to have these days excluded in computing the time taken in presenting his appeal. The appeal was presented on 30th August, and the period of limitation prescribed—thirty days from the date of the decree—is exceeded even after excluding eight days from the 3rd to 11th August (if it is calculated from the date of the decree itself). But in our opinion the fact that the decree was not in existence, that is signed by the particular Judge, and could not therefore be copied until 23rd July, that is, six days after the date that it bears, entitles the appellant to ask us to deduct those six days in addition to the eight days, and thus to hold that under s. 12 the appeal has been presented within the prescribed period.

In this case, the appellant obtained a copy of the decree (having made his application earlier) on the 11th August 1883, and he filed the appeal on the 30th idem, and was therefore well within time.

As to the other case, the law of course is the same; and at first sight it looks as if the appeal were beyond time, but, on examining the facts, it appears that the last day of the period of limitation was a Sunday, and therefore the time was extended to Monday, the 7th of April; consequently in this case also the questions must be answered in the affirmative, and the appeal must be taken to have been filed in time.

MITTER, J.—The judgment therefore of the lower Appellate Court in these cases will be reversed, and the cases will be remanded to that Court to hear the appeals on the merits.

T. A. P.

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